

Spring 1971

Development and Current Application of Missouri Public Sector Labor Law, The

Francis J. Loevi Jr.

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Francis J. Loevi Jr., *Development and Current Application of Missouri Public Sector Labor Law, The*, 36 Mo. L. REV. (1971)
Available at: <https://scholarship.law.missouri.edu/mlr/vol36/iss2/2>

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

THE DEVELOPMENT AND CURRENT APPLICATION OF MISSOURI PUBLIC SECTOR LABOR LAW

FRANCIS J. LOEVI, JR.*

I. INTRODUCTION

Early in 1970, the Labor Education Program of the University of Missouri-Columbia decided to set up and administer a "Public Employee Labor Law Seminar." This project was undertaken with the knowledge that lobbying efforts for a new and comprehensive labor law were occurring and could be expected to continue and grow. This being the case, it was thought that the University could best serve both the labor movement and the state by providing some of the top public employee labor leaders with information on the workings of public sector labor laws both in Missouri and in jurisdictions beyond those in which the invited union leaders operated.

Since it was assumed that the high rank and long service of the seminar participants had provided them with a basic working knowledge of how current Missouri public sector labor law applied to them, the bulk of the information covered at the seminar was presented in a manner geared toward using it to assess the value of experiences elsewhere as they might or might not be profitably applied to the situation in Missouri.

As the seminar progressed, however, it was discovered that the above assumption was invalid, and that among union leaders, at least, there did not appear to be any more than the most elementary knowledge of how they were affected by current legal precedents and legislation relating to public employee collective bargaining. Further inquiry into this situation revealed a number of interesting contributing factors. First, and probably most important, the Missouri State Labor Council had no public employee committee at which union leaders could regularly meet and exchange information. Fortunately, this problem has been at least partially solved in the short run by the labor law seminar. Since the participants immediately recognized the existence of large informational gaps, they took it upon themselves before the close of the seminar to form a permanent "Public Employee Labor Legislation Committee" for the purpose of discussing labor law in the State of Missouri and for furthering activities designed to produce a comprehensive public sector labor law for the state.

A second major contributing factor which was discovered was the fact

*B.A. in Labor-Management Relations, Pennsylvania State University; M.S. in Industrial and Labor Relations, Cornell University. Mr. Loevi is a former Labor Education Program Instructor, University of Missouri, Columbia and is now employed as a Labor-Management Relations Specialist by the Internal Revenue Service.

that there is no central reporting service for unions in the public sector in Missouri. While national reporting services such as the *Government Employee Relations Report* serve in some cases to provide useful information, coverage necessarily cannot be as complete as could be desired in terms of specific problems and precedents affecting Missouri public sector labor relations.

During the follow-up inquiries after the close of the seminar it was also discovered that unlike unions operating in the private sector, unions in the public sector, at least in Missouri, cannot be helped out of the dilemmas created by lack of knowledge of labor law with the introduction of experts from a national office, since these experts do not exist. It was particularly interesting to note at the time, that even the American Federation of State, County, and Municipal Employees, which functions exclusively in the public sector, had less information relating to the legal status of its unions in Missouri than did the Labor Education Program, whose public sector operation was less than six months old.

While no systematic survey was taken among government managers in Missouri, random interviews with a number of executives known to be deeply involved in establishing workable labor relations systems among their employees revealed a situation much like that which existed among labor's ranks. Little or no coordinated effort had been made to discuss problems unique to Missouri and, further, no sources of information existed other than those dealing with public sector labor relations in a most general manner.

As can be seen, at the time of the seminar not only was there no general system for compiling information relating to union-management relations in the public sector in Missouri, but further, had such a system existed, there was no way to distribute the information, since the people and organizations to whom such information would be useful existed in relative isolation.

As might be expected, the situation described above has led to the development of a number of misconceptions relating to the status of public employees under the law in Missouri. One source of such misconceptions is publications dealing with public sector labor law in general, and Missouri labor law only incidentally. In the August, 1969 Report of the Committee on State Labor Law to the American Bar Association, for instance, it was stated that the "Attorneys General in . . . Missouri (Opinion No. 276) held that while teachers may organize and present proposals, their exclusion from state bargaining laws precludes school boards from signing legally enforceable collective bargaining contracts with them."¹ As will be shown later, it is totally irrelevant whether or not a particular group of state employees is excluded from the state bargaining law as this relates to the en-

1. REPORT OF THE ABA SECTION OF LABOR RELATIONS LAW, COMMITTEE ON STATE LABOR LAW 60 (August, 1969) [hereinafter cited as ABA REPORT].

forceability of collective bargaining contracts, since both the Attorney General and the state supreme court have held that no public body within the state is legally responsible for carrying out the terms of a collective bargaining agreement. Similar mistakes may be found in other publications resulting, I would guess, from surface coverage of laws in states where no previous and easily obtainable research may be had.²

Even more critical to local labor leaders than the misconceptions to be found in general publications, are the often unknowledgeable and inept pronouncements of lawyers newly introduced into the field of public sector labor relations who are hired to advise public employee labor leaders on their rights under the law. One such piece of advice tendered to a local teachers' association regarding the legality of the agency shop spent three pages discussing precedent under the National Labor Relations Act and similar private sector precedent established in the Missouri courts.³ Throughout the opinion letter there was no indication that this particular attorney took any note of the fact that private sector precedent is not automatically transferable to the public sector, and that what is legal under Taft-Hartley in a General Motors plant is not necessarily legal under state public employee labor legislation in public institutions.

Similar examples of misguided pronouncements on the part of local attorneys may be found quite readily. All of these point out the need for a complete body of knowledge on the development and current application of the Missouri public employee labor law. It is only with such a body of knowledge that we can hope to close the information gap and thereby promote the formulation of realistic guidelines on the part of both labor and management relating to their dealings with each other.

The following, then, is an attempt to fill this existing void and to supply both labor and management with a starting point from which to assess their relative positions under the law. While an attempt will be made to avoid excessive use of personal opinion, it should be understood at the outset that very little of the law as it currently applies to public employees in Missouri has been tested in the courtroom, and consequently, judgments as to the exact meaning of particular facets of the law must occasionally be made for the sake of meaningful discussion.

The first part of this article will examine the constitutional parameters set by the Missouri Supreme Court for collective labor activities by public employees. The second part will trace the development of the statute law in

2. For instance, in *ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, LABOR-MANAGEMENT POLICIES FOR STATE AND LOCAL GOVERNMENT* 20 (1969) [hereinafter cited as *ADVISORY COMMISSION*], there is a chart which indicates that public employers in Missouri are required to reach a binding agreement. While a cursory study of the Missouri statutes might lead to such a conclusion, as will be shown in this article a closer look would have indicated that just the opposite is true.

3. In order to respect a confidence, and since no scholarly purpose could possibly be served by crediting the author of this letter, this information has been omitted.

Missouri. A third part will set out some current problem areas, such as charter cities, exclusions from the law, unit determinations, union security and work stoppages.

II. CONSTITUTIONAL GUIDELINES FOR UNION ACTIVITY

Article 1, Section 29, Missouri Constitution reads: "Organized Labor and Collective Bargaining—That employees shall have the right to organize and bargain collectively through representatives of their own choosing." Taken at face value, it would appear that since this section contains no references to any particular type of organized employee, all employees, including those in the public sector, are guaranteed the right to organize and bargain collectively with employers through their representatives.

In 1947, however, in the case of the *City of Springfield v. Clouse*,⁴ the Supreme Court of Missouri ruled that public employees have no right to bargain collectively through representatives of their own choosing. While recognizing that both the federal and state constitutions guaranteed the right of public employees to organize into labor organizations and to freely express themselves,⁵ the court refused to give a literal reading to Article I, Section 29 and held that the right to bargain collectively does not apply in the public sector.

In making this decision, the court relied on what was then the major obstacle to public employee collective bargaining—the question of sovereignty. Basically, as the Missouri Supreme Court stated in *Clouse*, the sovereignty doctrine held that since the legislature is the representative voice of all the people, "in the exercise of their legislative powers they must speak through laws which must be equally binding upon all and not through contracts. . . . Laws must be made by deliberation of the lawmakers, and not by bargaining with anyone outside the lawmaking body."⁶ This type of pronouncement was, of course, to be expected from the court in 1947, since virtually all decisions up to that time had endorsed a similar viewpoint, especially as it related to public employee collective bargaining.

Beyond the sovereignty argument, the court also relied on the practical observation that "the only field in which employees have ever established collective bargaining rights, to fix the terms of their compensation, hours, and working conditions, by such collective contracts, was in private in-

4. 356 Mo. 1239, 206 S.W.2d 539 (En Banc 1947).

5. All citizens have the right preserved by the first amendment to the United States Constitution and Sections 8 and 9 of Article 1 of the 1945 Missouri Constitution, Sections 14 and 29, Art. 2, Constitution of 1875, to peaceably assemble and organize for any proper purpose, to speak freely and to present their views and desires to any public officer or legislative body. Employees had these rights before Section 29, Article 1, 1945 Constitution was adopted.

City of Springfield v. Clouse, 356 Mo. 1239, 1246, 206 S.W.2d 539, 542 (En Banc 1947).

6. 356 Mo. at 1251, 206 S.W.2d at 545.

dustry.”⁷ Since 1947, however, both of the above arguments have been largely discredited.

In relation to sovereignty, one of the main arguments of the “traditionalists” was that the need for legislative discretion precluded compelling an employer to enter into any type of collective agreement or even honoring such commitments after they were made. The fact is, however, that similar arguments were not used in relation to procurement contracts. Such contracts have even contained provisions calling for arbitration to settle disputes over contract performance. Unions in the public sector, of course, noted these facts with great dismay since there seemed to be very little obvious difference between contracting for services with an outside organization and contracting for services with one’s own employees.

Beyond the arguments against sovereignty which can be made by simply observing its application in the real world, there were a number of theoretical arguments which also weighed heavily against its use. Wilson R. Hart, for instance, noted that even if the sovereignty doctrine is accepted at face value, “the doctrine does not preclude the enactment of legislation specifically authorizing the government to enter into collective bargaining relationships with its employees.”⁸

In the recent report of the Advisory Commission on Intergovernmental Relations the view was expressed that since the people and not the legislature is the true sovereign in a democracy, negotiations between public employees and their employers cannot be considered a usurpation of legislative sovereignty, there being no sovereignty to usurp.⁹ As for the question of sovereignty then, it would seem that the court’s determination, which appeared valid in 1947, is somewhat less than absolute in 1971.

As for the observation by the court that in 1947 virtually no employees outside the private sector had been accorded the right to bargain collectively, even cursory observation would indicate that this right has been accorded to many public employees at all levels of government since that time.¹⁰ It might also be noted that since 1947, not only have the arguments and precedents relating to public employee collective bargaining changed, but so has the entire bench of the Missouri Supreme Court.¹¹ Taking all these factors into consideration, it would seem that should a similar determination by the courts be made today, there is a strong possibility that the *Glouse* decision might be reversed. The likelihood of this

7. 356 Mo. at 1250, 206 S.W.2d at 543.

8. K. HANSLOWE, *THE EMERGING LAW OF LABOR RELATIONS IN PUBLIC EMPLOYMENT* 20 (1967) (quoting Wilson R. Hart).

9. ADVISORY COMMISSION, *supra* note 2.

10. Extensive documentation of this fact may be found throughout the ADVISORY COMMISSION, report, *supra* note 2.

11. The judges on the court in 1947 were: Ernest M. Tipton, George Robbelison, C. A. Leedy, Jr., James M. Douglas, Albert M. Clark, Lawrence M. Hyde, and Piasco P. Conkling. At present the justices are: Robert T. Donnelly, James A. Finch, Jr., Fred L. Henley, Lawrence Holman, Robert Seiler, John Bardgett, and J. P. Morgan.

happening, however, is somewhat decreased by the fact that the Missouri Supreme Court in recent cases has cited *Clouse* with approval.¹² Further, any possibility of a constitutional change in the near future was eliminated by the defeat in 1969 of House Joint Resolution No. 9 which attempted to broaden Article 1, Section 29 to explicitly include public employees.¹³

Assuming that for the near future the *Clouse* judgment on bargaining activity under the constitution will stand, it will be of some value to take a closer look at exactly what it was the court prohibited. The court specifically devoted a section of the decision to eliminating the possibility that the denial of collective bargaining rights for public employees might be confused with the denial of the rights of petition and free speech.

[P]ersons are not engaging in collective bargaining when they tell their senator, representative, or councilman what laws they believe they should make. Neither are they engaging in collective bargaining with executive or administrative officers when they urge them to exercise discretionary authority within standards and limits which they have received, or must receive from the legislative branch, or ask them to make recommendations to the legislative branch for further legislation.¹⁴

What we seem to have is not a prohibition against bargaining itself, but rather a prohibition of administrative ratification of agreed to conditions without legislative approval. Bargaining, therefore, even under the *Clouse* case could probably exist in all situations where the administrative body has the power to recommend legislation and be relatively certain of its passage. Since this situation is by no means uncommon, at all levels of government, it would appear that what the court is requiring is simply that the legislative body be given the same power to ratify negotiated agreements as is given to union rank and file.

In a second decision,¹⁵ decided concurrently with *Clouse* and also relating to organizational activities of public employees, the Missouri Supreme Court decided that some limits might be placed on the organizational activities of public employees for the protection of public welfare and upheld a rule of the St. Louis Police Department prohibiting membership in

12. See *Missey v. City of Cabool*, 441 S.W.2d 35 (Mo. 1969); and *Bergman v. Board of Education*, 360 Mo. 644, 230 S.W.2d 714 (1950).

13. The amended Section 29 would have read:

That all employees, including the employees of state, county, city, incorporated town or village, school district, or other political corporation or subdivision of the state, or within the state, shall have the right to organize and to bargain collectively through representatives of their own choosing; and all employers, including state, county, city, incorporated town or village, school district or other political corporation or subdivisions of the state, or within the state, shall have the authority to enter into collective bargaining contracts with their respective employers.

14. 356 Mo. at 1248, 206 S.W.2d at 543.

15. *King v. Priest*, 357 Mo. 68, 206 S.W.2d 547 (En Banc 1947).

organizations other than "authorized relief, funeral, and pension fund associations. . . ."¹⁶ In this case, it was a local of the American Federation of State, County and Municipal Employees.

Constitutionally, at least, it would seem that such a rule might well be upheld today, as was noted in the 8th Circuit decision of *American Federation of State, County and Municipal Employees v. Woodward*,¹⁷ where the court stated that, given a paramount public interest, freedom of association might be limited at the discretion of the state. This case may prove of a special importance to police organizations in Missouri since the state falls within the jurisdiction of the 8th Circuit. It should be noted, however, that in the recent past there have been no decisions by the courts in which a paramount public interest was thought to outweigh the first and fourteenth amendments.¹⁸

III. STATUTORY GUIDELINES FOR UNION ACTIVITY Senate Bill No. 112¹⁹

The first experience with a comprehensive public employee collective bargaining statute in Missouri came with the passage in 1965 of Senate Bill No. 112. As will be obvious later, the word comprehensive is used here only to indicate the attempt on the part of the legislature to cover all public employees and by no means connotes the existence of extensive procedural guidelines.²⁰ In fact, in terms of the procedural aspects of public employee labor-management relations, Senate Bill 112 was probably one of the least comprehensive pieces of legislation ever produced. It consisted of a total of twenty-three lines divided into four sections, and would appear to have provided public employees with no more rights than they possessed constitutionally under the *Clouse* decision.

The first section of Senate Bill 112 simply defined "public body" as "the State of Missouri or any officer, board or commission of the state, or any political subdivision of or within the state." This seemingly uncontroversial provision was the subject of some debate regarding the interpretation of the term "political subdivision" as it related to the inclusion of cities, towns, villages, and other local authorities within the scope of the statute. The Missouri Attorney General, however, quickly settled this question with his pronouncement that "the legislature was not viewing the terms

16. *Id.* at 75, 206 S.W.2d at 549.

17. 406 F.2d 137 (8th Cir. 1969).

18. ABA REPORT, *supra* note 1.

19. §§ 105.500-.530 RSMo 1965 Supp., reprinted in full in Appendix No. 1. It is customary in Missouri to refer to statutes relating to public sector labor relations as "Bills." In order to avoid confusion, therefore, it should be noted that Senate Bill 112, as well as House Bill 166 and Senate Bill 36 which will be discussed later, have all been enacted into law.

20. House Bill No. 146, a 1963 act relating to collective bargaining between cities and fire fighters and declared unconstitutional in 1968, will be discussed later under the heading STATUS OF CHARTER CITIES.

in their narrower sense, but in their broader and more comprehensive sense," and that it, therefore, "intended 'political subdivision' to include cities, towns, and villages."²¹ This determination, however, could have easily been predicted in view of the fact that the supreme court in the *Clouse* case made no distinction between the constitutional rights of employees of different government bodies.

The second section of Senate Bill No. 112 was somewhat more controversial. The first part of that section read:

Employees, except police, deputy sheriffs, Missouri State Highway Patrol, Missouri National Guard, all teachers of Missouri schools, colleges, and universities, of any public body shall have the right to form and join labor organizations and present proposals to any public body relative to salaries, and other conditions of employment through representatives of their own choosing.²²

As noted previously, the Missouri Supreme Court in *Clouse* had already recognized the right of all citizens, no matter where employed, to "peaceably assemble and organize for any proper purpose, to speak freely, and to present their views and desires to any public officer or legislative body."²³

While the case of *King v. Priest* may stand as a justification for preventing law enforcement officers and the National Guard from collectively bargaining²⁴ there seems to be no precedent, either in Missouri or anywhere in the country, upon which the legislature could base its denial of basic constitutional rights to teachers.

The second part of section two of Senate Bill 112 stated that:

[N]o such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization.

Here again, it would seem that the legislature did little more than codify those constitutional rights of public employees enunciated in the *Clouse* case. Further, since no enforcement agency was created by the legislation, the courts remained the only channel through which an employee could obtain redress for the violation of his rights.

The effectiveness of this guarantee of employee organizational rights may well be indicated by the fact that during the two-year life of Senate

21. Opinion of Attorney General of Missouri, No. 68, May 6, 1966, p. 13.

22. § 105.510, RSMo 1965, Supp.

23. *City of Springfield v. Clouse*, 356 Mo. 1239, 1246, 206 S.W.2d 539, 542 (1947).

24. *King v. Priest*, 357 Mo. 68, 206 S.W.2d 547 (En Banc 1947); Nickolaus, *Public Employee-Employer Relations: A Discussion of S.B. 112*, MISSOURI MUNICIPAL REVIEW 263 (1965).

Bill 112 not a single case of discrimination or coercion was brought before the courts. It is fairly certain, however, given the newness of public employee collective bargaining to managers of government operations, that many instances of discrimination or coercion occurred but went uncorrected.

Section three of Senate Bill 112 stated in part that "[a]ny public body may engage in negotiations relative to salaries and other conditions of employment of the public body employees, with labor organizations." Controversies regarding this section centered around the word "negotiations." Basically, the problem was that if the term "negotiations" was intended to mean collective bargaining, it appeared that Section 3 of Senate Bill 112 was violative of the Constitution of Missouri as interpreted in the *Clouse* case.²⁵ This problem, however, was quickly settled by an opinion from the Attorney General:

Our common understanding of the word negotiate is talk, communicate, or engage in a dialogue respecting particular subject matters. We have found nothing to mean that the word negotiations means more than the parties meet together to discuss their differences with a view of reaching an understanding. . . . There is no language that indicates negotiations may be equated with 'collective bargaining.' 'Collective bargaining' results in an accord which will result in an agreement as to the terms which will govern the many interrelated problems between the employer and the employee.²⁶

Consequently, the Attorney General concluded that while "a representative of a public body may . . . meet with a representative of employees and talk about problems of mutual interest . . . [t]his does not include the right or power to engage in collective bargaining."²⁷

It should also be noted that negotiating, according to Senate Bill 112, was a permissive activity for a public body as opposed to a mandatory one. Since the Attorney General in 1957 had stated that, "[i]n the absence of any statutory provisions authorizing it to do so, the county [administrative body] does not have the power and cannot enter into negotiations with a labor union or enter into contracts of employment with representatives of such unions,"²⁸ it would appear that the inclusion in Senate Bill 112 of the phrase "*may engage in negotiations*" (emphasis added) might well have been a step in the right direction. The fact, however, that public bodies were still free to refuse to negotiate, gave this step minor significance at best.

The second part of Section 3 stated that "[u]pon the completion of negotiations the results shall be reduced to writing and presented to the

25. *Id.* at 266.

26. Opinion of Attorney General of Missouri, No. 68, May 6, 1966, pp. 9-10.

27. *Id.* at 14.

28. Opinion of Attorney General of Missouri, No. 68, March 15, 1957.

governing or legislative body in the form of an ordinance or resolution for appropriate action." There was some question as to the constitutionality of this clause. If it is interpreted to mean that upon the completion of negotiations the legislative body must then decide whether to enact or defeat the provisions of the proposed statute, ordinance or resolution, then "the legislature has attempted to confer upon a group of employees the powers to initiate legislation, which power is reserved to the people by the Constitution."²⁹ If this sentence merely means that upon completion of negotiations a writing shall be presented to the legislative body to be considered by them as to whether or not they will introduce it and consider it or not, "this sentence then confers upon public employees and public officers no greater power than the right to petition, a power they already possess under the United States and Missouri Constitutions."³⁰

There has, as yet, been no determination upon this question by either the Attorney General or the courts. The practicalities of the labor-management relationship, however, indicate that even though public employees may constitutionally be allowed only to petition the legislative body, and not be guaranteed that any action will be taken, only an ill-advised legislature would allow such a situation to occur, since no valid purpose could be achieved by a refusal to take action on matters agreed to between labor and the administrative body. Rather, such inaction would almost certainly provoke the imposition of sanctions on both the legislature and the community by the union involved.³¹

Finally, the fourth section of Senate Bill 112 said that, "[n]othing contained herein shall be construed as granting the rights of employees covered hereby to strike." A careful reading of this statement would indicate the possibility of construing it to mean that while the right to strike has not been granted, neither has it been enjoined. In conversations with the individual claiming responsibility for drafting the wording³² it was indicated that this was indeed the intent of the clause. Given the overall attitude of Missouri legislators toward public employee bargaining, however, as indicated by the scope and content of Senate Bill 112, it is seemingly obvious that the legislature had no similar intention in mind. Considering the facts, though, that Senate Bill 112 contained no penalties for strike activity, and that during its life there were only six strikes in the public sector in Missouri, none of which seem to have been regulated by the courts in any way, it would appear that the question of which interpretation would have been accepted by the courts is moot.

29. Nickolaus, *supra* note 24, at 266.

30. *Id.*

31. One has only to look at the recent activities of postal unions for a picture of the result of legislative inaction.

32. There is general agreement that the wording of this clause is the work of a St. Louis based attorney for the American Federation of State, County and Municipal Employees.

House Bill No. 166³³

After a short and relatively uneventful history Senate Bill 112 was repealed and completely replaced in 1967 by House Bill 166. Except for one minor amendment, this 1967 law stands today as the guide for public sector labor-management relations in Missouri. In the main, what House Bill 166 did was to amend Senate Bill 112 to more accurately conform with opinions of the Attorney General and to introduce the services of the State Board of Mediation as the administrative agency for purposes of unit determination. Pressure for the change came mainly from the non-professional public employee unions in the state and from the State Labor Council who had rapidly come to the realization that little could be accomplished in the field of public employee bargaining without a conflict-free method for resolving questions of appropriate unit and majority status.

Part one of House Bill 166 again defined "public body," but added a number of specific examples to part one of section 105.500 so that "public body" now means, "the State of Missouri, or any officer, agency, department, bureau, division, board, or commission of the state, or any other political subdivision of or within the state." This expansion was in line with the previously discussed determination of the Attorney General,³⁴ since it clarified the fact that the legislature had intended the term "public body" to be defined in the broadest possible terms.

A second and third part were added to section 105.500 which defined "exclusive bargaining representative" and "appropriate unit" under the Act. This was done apparently to provide some guidelines for determinations of majority status by the State Board of Mediation. "Exclusive bargaining representative" was defined as "an organization which has been designated or selected by a majority of employees in an appropriate unit as the representative of such employees in such unit for the purpose of collective bargaining." "Appropriate unit" was defined as "a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

Section 105.510, dealing with employee groups which are excepted from the Act and also with the rights of employees to organize and present proposals without fear of discharge or discrimination, remained unchanged from the version that existed in Senate Bill 112. Since the passage of House Bill 166, however, there has been a Supreme Court ruling which firmly establishes the right of employees to gain redress for actions in violation of this section and provides a relatively speedy method for doing so. The case of *Missey v. City of Cabool*,³⁵ resulted from a situation in which the City of Cabool refused to recognize a local union representing a majority of its

33. Appendix No. 2.

34. Opinion of Attorney General of Missouri, No. 68, May 6, 1966, p. 13.

35. 441 S.W.2d 35 (Mo. 1969).

employees, laid off regular employees who were known to be union members, fired a witness for the union at a union representation hearing, and raised the wages of remaining employees.

Since House Bill 166 provided no remedies for failure to abide by its provisions, a decision had to be made by the union regarding the most suitable method for obtaining redress in the courts. While a law suit for damages would have provided monetary relief for those employees adversely affected by the city's anti-union activities, it would probably have meant a long delay before a ruling could be obtained. Further, a simple monetary award without a requirement that the city reinstate affected employees to their former positions would not necessarily counteract anti-union actions since, in many cases, management would be willing to risk a certain amount of monetary loss resulting from law suits in order to rid itself of union activists. Prompter and more thorough action could be obtained by securing a restraining order or temporary injunction to stop illegal activities on the part of the city and to have the adversely affected employees reinstated with back pay. The problem that arises with this approach, however, is that the union will be required to post a bond to cover damages that may result from the order or injunction.³⁶ Such costs are often prohibitive.

In cases where the object of the action is to compel a public body to comply with a legal mandate, a third avenue of redress is available in the form of a writ of mandamus. While the relief possible through the use of a mandamus suit may not always be as broad as with an injunction, specific actions such as illegal dismissal can be remedied. Action in such cases is usually quite prompt, and no bond is required. Further, while a damage suit or injunction must always start in the county circuit court, it is possible to request a writ of mandamus directly from the Missouri Supreme Court.

Given all the above factors, the union representing the adversely affected employees decided to file for a writ of mandamus for the purpose of requiring the City of Cabool to reinstate the employees discharged for union activity and to recognize the union chosen by employees as mandated under House Bill 166. In a ruling granting the relief requested, the court held that while:

[t]his act [House Bill 166] does not purport to give public employees the same rights to union activities as those enjoyed by employees in private industry and, even though job tenure of public employees is at the discretion of the legislative body, such body cannot exercise that discretion for an illegal purpose such as the violation of statutory rights granted appellant employees.³⁷

Moving on to section 105.520, note that a number of substantial changes were made in relation to the duty of employers. In what appeared to be a

36. Mo. R. Civ. P. 92.09.

37. 441 S.W.2d at 42.

step backward, the legislature retreated from the word "negotiate" to "meet, confer, and discuss," so that the first part of that section now reads that, "[w]henever such proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives shall meet, confer, and discuss such proposals. . . ." Taking the word "negotiate," however, in light of the Attorney General's opinion on its meaning discussed earlier,³⁸ it is fairly clear that in practical application the differences between "negotiate" and "meet, confer, and discuss," according to the Attorney General at least, are nonexistent.

A significant change in this clause, however, was that the word "may" was changed to "shall," making it mandatory for public employers to discuss any proposals presented by the exclusive bargaining representative. In view of the court's determination in *Missey*, however, that "[t]he public employer is not required to agree but is required only to 'meet, confer, and discuss,' a duty already enjoined [constitutionally] upon such employer prior to [House Bill 166],"³⁹ it would appear that the statutory provision making discussions with employee groups mandatory still goes no further than to codify constitutional rights.

House Bill 166 also more clearly outlined the procedure involved for securing final legislative approval of agreed-to terms by amending section 105.520 to require that the results of discussions be reduced to writing and "presented to the appropriate administrative, legislative, or other governing body in the form of an ordinance, resolution, bill or other form required for *adoption, modification or rejection*." (emphasis added).

Taking this statement at face value it would appear that, unlike Senate Bill 112, House Bill 166 has conferred upon a group of employees the power to initiate legislation, since some form of action, be it adoption, modification, or rejection is required of the legislative body. While in practice there will probably be no actual change in the methods by which agreements are considered, in theory, at least, there is apparently a valid constitutional question to be resolved.

House Bill 166 enacted what is now section 105.525, a completely new addition to Missouri public employee labor legislation which dealt with unit determinations and regulatory agencies. It required that:

Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the state board of mediation. In the event that the appropriate administrative body or any of the bargaining units shall be aggrieved by the decision of the state board of mediation, an appeal may be had to the circuit court of the county where the administrative body is located or in the circuit court of Cole county. The state board of mediation shall use the services of the state hearing officer in all contested cases.⁴⁰

38. Opinion of Attorney General of Missouri, No. 68, May 6, 1966, pp. 9-10.

39. 441 S.W.2d at 41.

40. § 105.525, RSMo 1969.

This section apparently contains the only gains that public employees made over their basic constitutional rights by the passage of House Bill 166.

A number of problems have arisen as a result of the inclusion of this clause in the law, most of which relate to its practical application, and this will be discussed under the next heading. There is, however, a problem in the wording itself in that the "State Hearing Officer," mentioned in the last line, does not appear to exist. The Attorney General's office seems to be of the opinion that the State Hearing Officer is in reality, the "Administrative Hearing Commissioner," an office created in 1965 and assigned to the division of registration and examinations of the State Department of Education.⁴¹

Exactly what the duties of the Administrative Hearing Commissioner would be in a situation where the State Mediation Board decision were contested is somewhat unclear. The only case where a Board decision was questioned gives no indication whether the services of the Administrative Hearing Commissioner were used or even contemplated.⁴² In view of his qualifications for the job, though, it comes as no surprise that he was not involved in the case.⁴³ Nowhere is it required that he have any labor relations background and, while it might be assumed from the nature of his assignment that he would be qualified to make a valid defense of a unit determination for a group of teachers, this is one of the occupational categories that has been explicitly denied his services. Further, while it is required that the Administrative Hearing Commissioner be an attorney and consequently of some possible value for supplying legal services to the State Board of Mediation, the current Board Chairman himself is an attorney and also has long experience in the field of labor relations. Consequently, for the present at least, the availability of the services of the Administrative Hearing Commissioner ("State Hearing Officer") for administrative purposes under House Bill 166 is superfluous at best.

The final section of House Bill 166 again stated that "[n]othing contained herein shall be construed as granting the right of public employees covered hereby to strike."⁴⁴ While the lack of clarity contained in Senate

41. This determination was obtained in an informal interview with an Assistant Attorney General and may not represent the opinion of the Attorney General himself.

42. State ex. rel. Missey v. State Board of Mediation, No. 53552, (Mo., Aug. 3, 1968) (unreported).

43. § 161.252, RSMo 1969:

There is hereby created a state administrative agency to be known as the "Administrative Hearing Commission," which is assigned to the division of registration and examinations of the State Department of Education. It shall consist of one commissioner. The commissioner shall be appointed by the governor with the advice and consent of the Senate. The term of the commissioner shall be for six years until his successor is appointed, qualified, and sworn. The commissioner shall be an attorney at law admitted to practice before the Supreme Court of Missouri, but shall not practice law during his term of office. . . .

44. § 105.530, RSMo 1969.

Bill 112 remained, the fact that the effect of the statement had yet to be tested lead to its reiteration in House Bill 166.

Senate Bill No. 36⁴⁵

Early in 1969 the legislature again dealt with public employee collective bargaining and passed what is now known as Senate Bill 36. What this bill did was to amend section 105.510 as it related to excluded employees to read that, "the above excepted employees have the right to form benevolent, social and fraternal organizations."⁴⁶ What this means to Missouri police, deputy sheriffs, Missouri Highway Patrolmen, National Guard, and teachers is somewhat unclear. Since this section continues to cite teachers as an excluded group, however, and since the legislature has now made it quite apparent that it wishes to deny teachers the right to even organize into a labor organization, it would seem that an important constitutional question has been raised. This problem will be explored under the subsequent heading CURRENT LEGAL AND ADMINISTRATIVE CONTROVERSIES.

Aside from the implications of Senate Bill 36 as it relates to teachers, there may also be some effect on other excluded groups, especially police departments, given the decision in *King v. Priest*.⁴⁷ It will be recalled that this decision upheld a rule prohibiting police officers from joining not just labor organizations but all organizations not authorized by the Board of Police Commissioners of the city of St. Louis. The possible constitutional complications of such a decision were noted by Judge Douglas in a concurring opinion in which he stated that while he was in agreement with the Board's right to prohibit the joining of labor organizations by police, prohibiting membership in all unauthorized organizations "seems to be so broad as to place unreasonable restrictions on the rights of the members of the police department as citizens to meet and to join organizations."⁴⁸

On the whole, it would seem that public employee labor legislation in Missouri leaves much to be desired and is short-sighted, especially given the fact that when the bulk of it was passed in 1967, it was apparent that public employee labor organizations were here to stay, and that there was an obvious need for establishing policies and procedures to deal with them.⁴⁹

45. § 105.510, RSMo 1969. Reprinted in Appendix No. 3.

46. § 105.510, RSMo 1969.

47. 357 Mo. 68, 206 S.W.2d 547 (En Banc 1947).

48. *Id.* at 89, 206 S.W.2d at 558.

49. The weight of evidence suggests that the enactment of positive legislation is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work. Such legislation will not eliminate all disputes and may not eliminate all work stoppages, but it will produce some rational methods for dealing with them.

1967 EXECUTIVE COMMITTEE, NATIONAL GOVERNORS' CONFERENCE, REPORT OF THE TASK FORCE ON STATE AND LOCAL GOVERNMENT LABOR RELATIONS 6 (1967).

The major reason for this legislative inaction appears to be the fact that public employee organizations in the state have yet to be able to launch a coordinated drive for a comprehensive law. While most of the larger organizations have recognized the need for better legislation, resolution of the problem has always taken the form of pressure by one or a small group of unions for legislation geared specifically to them.

The clearest example of this situation is the action which has been taken by the 42,000 member Missouri State Teachers Association (MSTA) toward securing bargaining rights for their members. As the largest public employee organization in the state, MSTA could probably be the deciding factor in securing passage of a comprehensive bill if it were to act in cooperation with other public employee organizations in Missouri. MSTA leadership, however, has chosen not to associate itself with unions of non-professional public employees, but rather to press for separate legislation relating to "professional negotiations" for teachers only. While such legislation may be better suited to the needs of teachers than a bill covering all public employees, the chances for it being passed without the backing of other public employee organizations are minimal, at best.

Both this and other similar instances of lack of coordinated effort have in the past diminished the power of public employees in the state legislature to the point where passage of adequate legislation was impossible. As might be expected, this lack of adequate legislation has created many unnecessary labor problems which will be explained in the following section.

IV. CURRENT LEGAL AND ADMINISTRATIVE CONTROVERSIES

A. Charter Cities

One of Missouri's most pressing problems in the field of public employees labor law involves the applicability of legislation to constitutional charter cities. Article VI, Section 22 of the Missouri Constitution reads:

[N]o law shall be enacted creating or fixing the powers, duties, or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous Constitution. . . .

As a result of this section some question has arisen as to whether or not any state labor laws relating to public employees may be applied to constitutional charter cities.

It should be noted at this point that, while Section 22 confers broad powers on city administrations, it is qualified somewhat in Section 19 of the same article in which it is stated that "[a]ny city adopting a charter for its own government can do so only as far as the charter is consistent with and subject to the laws of the state. . . ." The question, then, is at what point do the laws of the state take precedence over the charter of a Missouri charter city? Courts have held that this point is reached when the impact

of legislation is to deal with a statewide concern, and is consequently beyond the scope of the powers of constitutional charter cities.⁵⁰

The problem involved in making such a determination as it relates to public employee labor law was first recognized by the Attorney General in 1966 when he stated that, while in his opinion cities, towns, and villages fell within the scope of the term "public body" found in Senate Bill 112, he did "not overlook the limitations placed upon the legislature and possibly [the] Act . . . by Section 22 of Article VI applicable to Constitutional Charter Cities [and that] the impact of this constitutional provision upon this act will need to await further clarification by the courts under facts yet to arise."⁵¹ Since that time the problem has been dealt with by the courts and the Attorney General on a number of occasions. There seems as yet to be no clear determination, but the most compelling arguments appear to be in favor of applying House Bill 166 to constitutional charter cities.

In the 1968 case of *State ex rel. Burke v. Cervantes*,⁵² the court dealt with the scope of Article VI, Section 22 as it related to an act passed in 1963 providing for the appointment of arbitration boards by chief executive officers of counties, cities, or towns in cases where disputes existed between these bodies and their fire departments. The Missouri Supreme Court in that case noted that, "[t]here is much conflict in the decisions as to whether fire protection in municipalities is peculiarly local, or of statewide concern subject to regulation by the state,"⁵³ but held that fire protection is indeed a local concern and consequently that the state law providing for advisory arbitration for firemen's grievances was unconstitutional as applied to constitutional charter cities, because it imposed duties on a municipal office not authorized by a city charter. In settling labor disputes the court declared that, "[t]he mayor as the chief executive officer of the city cannot be required to assume the additional duty of appointing a Firemen's Arbitration Board."⁵⁴

Whether or not House Bill 166 is unconstitutional as applied to charter cities on the same grounds is another question. *Cervantes* did not center around the applicability of public employee labor laws in general to charter cities, but rather, around the additional duties imposed on the mayor. It would appear, therefore, that if the services of state personnel were utilized to perform the procedural duties imposed by a public employee labor law, much of the court's reasoning would be inapplicable. Further, as to the question of local versus statewide concern, there would seem to be little doubt that the overall conduct of public employee labor relations is as important to the state as state aid and welfare programs which frequently specify minimum qualifications for local professional employees to insure a reasonable level of competence.

50. *State ex rel. v. Cervantes*, 423 S.W.2d 791, 794 (Mo. 1968).

51. Opinion of Attorney General of Missouri, No. 68, May 6, 1966, pp. 13-14.

52. 423 S.W.2d 791 (Mo. 1968).

53. *Id.* at 793.

54. *Id.* at 794.

Recent opinions by the Attorney General would indicate that he, too, is strongly of the opinion that comprehensive labor laws, such as House Bill 166, apply equally to charter cities and non-charter cities alike. In an opinion to the St. Louis Housing Authority, a municipal corporation under Missouri law, he advised that municipal corporations came within the scope of the term "public body" found in House Bill 166.⁵⁵ Further, in an opinion regarding the charter city of Independence, Missouri, where a question arose as to the appropriate unit for bargaining, the Attorney General discussed the city's rights under House Bill 166 without even a mention of the fact that it might not be applicable to charter cities under Article VI, Section 22 of the Constitution.⁵⁶

In sum, it would appear that charter cities are subject to the provisions of House Bill 166. This opinion is further bolstered by the statement of the court in *Glouse*, which noted that, "Missouri cities have or can exercise only such powers as are conferred by express or implied provisions of the law; their charter being a grant and not a limitation of power subject to strict construction with doubtful powers resolved against the city."⁵⁷

B. Exclusions

As noted previously, the amendment to section 105.510 by House Bill 166 which gave excepted employees "the right to form benevolent, social and fraternal organizations," apparently indicates the legislative intent specifically to prohibit the formation of labor organizations by teachers.

Such a move is somewhat surprising in view of the fact that in 1950 the Supreme Court of Missouri dealt with the question of organizational rights for teachers and decided that these rights were constitutionally protected in light of the *Glouse* decision.⁵⁸ Even more surprising is the fact that almost immediately preceding the passage of the qualifying amendment, the Attorney General noted that this decision was still controlling and that consequently, "[t]eachers have the legal right to organize labor unions in the same manner as do employees in private industry."⁵⁹

As for the rights of teachers to go beyond the simple act of organizing, the Attorney General's construction is somewhat less liberal. He has stated that in light of Section 105.510, RSMo 1969, boards of education have no statutory authority to deal with teacher organizations as bargaining representatives for individual teachers.⁶⁰ Further, he has stated that regardless of limitations on the boards' activities, "teachers' representatives are not permitted to enter into any sort of professional negotiations by reason of the fact that they are expressly excluded from [the Act]."⁶¹

55. Opinion of Attorney General of Missouri, No. 394, November 2, 1967.

56. Opinion of Attorney General of Missouri, No. 84, March 6, 1970.

57. 356 Mo. at 1252, 206 S.W.2d at 546.

58. *Bergman v. Board of Education*, 360 Mo. 644, 230 S.W.2d 714 (1950).

59. Opinion of Attorney General of Missouri, No. 276, Dec. 12, 1968, p. 3.

60. Opinion of Attorney General of Missouri, No. 153, May 2, 1969, p. 5.

61. Opinion of Attorney General of Missouri, No. 57, June 1, 1970, p. 2.

Taking into consideration the determination of the *Missey* case, however, that the right to negotiate is no greater under House Bill 166 than it is under the constitutionally protected right to petition,⁶² and also considering the *Bergman* decision that teachers have the same constitutional guarantees as other public employees,⁶³ it would seem that both the qualifying amendment to section 105.510 and the Attorney General's opinions are of questionable validity. The Missouri Supreme Court has yet to rule on the matter. It was hoped that the court would make a determination of the status of teachers under the law in *St. Louis Teachers Association v. Board of Education*,⁶⁴ a recent case brought by the St. Louis Teachers' Association for a declaration that the Board of Education of the City of St. Louis may enter into an agreement with the teachers' organization to negotiate problems of mutual concern. But the court made a finding that it had no jurisdiction and ordered the cause transferred to the St. Louis Court of Appeals.

C. Unit Determination

According to House Bill 166, all issues relating to appropriateness of unit and majority status are to be resolved by the State Board of Mediation. Such a provision would seem to cover adequately the need in unit determination questions for some type of administrative machinery. Whether or not this is true, however, is open to some question.

The State Board of Mediation was created under the Public Utility Labor Disputes Mediation and Seizure Act passed in 1947.⁶⁵ The duties of the Board at that time related to settling disputes in public utilities. The Board consisted of only one full-time member and four part-time members. While a body of this size may have been adequate for settling public utility disputes in 1947, there can be little doubt of its inadequacy as an administrative agency charged with making unit determinations for employees at all levels of Missouri government.⁶⁶ The problem of the Board's inability to cope with its work load is compounded by the fact that its one full-time member is over 80 years old.

Since 1967 the Board has had a total of 35 requests for unit determinations. This figure is surprisingly low and can be explained only by the fact that labor leaders are skeptical of the Board's ability to function adequately in making unit determinations. They may feel that they are better off without the Board's services. Such misgivings are justified by the fact that of the 35 requests received by June 30, 1970, only 17 were acted upon.⁶⁷ In

62. 441 S.W.2d at 38.

63. 360 Mo. 644, 230 S.W.2d 714 (1950).

64. 456 S.W.2d 16 (Mo. 1970).

65. Chapter 295, RSMo 1969.

66. As of November, 1969, Missouri had nearly 47,000 state employees and over 138,000 government employees at the local level.

67. These figures and those to follow relating to Board activities were obtained directly from the office of the Chairman.

one case it was even necessary for a labor organization to file for an alternative writ of mandamus in order to force the Board to act upon its request.⁶⁸ In others, action has been so slow as to be more of a hindrance than a help in promoting harmonious labor-management relations.

In the recent case of the Nevada City Hospital, for instance, a request was made by the American Federation of State, County, and Municipal Employees for a unit determination election on November 13, 1969. At that time the union seemed quite confident of victory. When action was finally taken, seven months later, on the 21st of June, 1970, the supposed union majority had vanished. Whether or not this majority ever existed is open to question. It would seem, however, that giving a hostile management seven months in which to persuade employees not to join the union at a time when the union is legally prohibited from any bargaining activity will work against the union to such an extent that even if a majority exists when the request is made there is very little chance for its survival.

To further compound the problem, annual budgets for the State Board of Mediation are nowhere nearly adequate to support the mandate under House Bill 166. For fiscal year 1970-71, for instance, it is only \$26,681.

On top of the Board's inability to function because of inadequate funds and staff, the Attorney General has recently issued an opinion which seemingly takes away from the State Board of Mediation what little power it had to determine the appropriate unit and puts this power into the hands of management. In responding to the question of whether or not a city could exclude the fire chief and assistant fire chief from agreements entered into with the local fire fighters' association, the Attorney General responded that,

[u]nder Section 105.520 a public body can adopt, modify, or reject the proposed ordinance, resolution, bill or other form of proposal. If the governing body had this statutory authority . . . it seems clear to us that governing body (in this case, a city) can exclude administrative and executive personnel from the operation of their ordinances in their discretion. . . . Whether an employee (not within the excepted group) comes within the terms and effect of any written proposals between the union and the city, in this case, depends on the action taken by the appropriate administrative, legislative, or other governing body.⁶⁹

This opinion is obviously in direct contradiction to section 105.525 which states that, "[i]ssues with respect to appropriateness of bargaining unit and majority representative status shall be resolved by the state board of mediation." Further, in a case dealing with the appropriate unit for fire fighters in another city in Missouri, the Board found that the appropriate

68. *State ex rel. Missey v. State Board of Mediation*, No. 53552 (Mo., Aug. 3, 1968) (unreported).

69. *Opinion of Attorney General of Missouri*, No. 84, March 6, 1970.

unit did, indeed, include not only the low ranking fire fighters but also their superior officers.⁷⁰

Should the Attorney General's opinion stand, the state of labor relations among public employees in Missouri would return to what it was immediately following the decision in the *Clouse* case in 1947, because the Missouri Supreme Court stated in the *Missey* case that all requirements of House Bill 166, other than those relating to the State Board of Mediation, were constitutionally guaranteed long before its passage.⁷¹

D. Union Security

Like most public employee collective bargaining statutes, House Bill 166 is silent on the issue of union security. Missouri has the familiar "right to refrain" clause in section 105.510 dealing with organizational activities. This clause allows individuals not wishing to participate in union activities to do so without fear of retribution from either the union or the employer. In an uncontested appellate court decision, however, it was ruled that school boards could adopt regulations requiring teachers to join professional associations as a condition of enjoying rights conferred by the salary schedule.⁷² Behind this decision was the reasoning that since school boards must obtain the services of the best qualified teachers, it was not unreasonable for them to adopt rules and regulations designed to elevate teachers' standards and educational standards.

From this decision it would seem but a short step to allow any public management entity to require that its employees join and support labor organizations since virtually all labor organizations claim in one way or another to increase the competence of their members. This is especially true in the case of the many professional associations in civil service which have lately taken on the added responsibility of acting as bargaining agent for their members.

But, regardless of whether or not the above discussion is an accurate assessment of the legal situation as regards union shop provisions in Missouri public sector agreements, there seems to be no legal bar at this point to agency shop clauses. In fact, a number of such contracts exist⁷³ and, as yet, there has been no attempt to void such clauses in the courts.

70. STATE BOARD OF MEDIATION, in re: *Determining (a) appropriateness of bargaining unit and (b) majority representation, for the fire department of Grandview* (Missouri), May 28, 1969.

71. 441 S.W.2d at 41.

72. *Magenheim v. Board of Education*, 347 S.W.2d 409 (Mo. 1961).

73. One such clause, for instance, in an agreement between AFSCME Local No. 410 and Crystal City, Missouri, recently enforced with the consent of the city. That clause reads:

[A]ny present or future employee who is not a Union member and who does not make application for membership, shall, as a condition of employment, pay to the Union each month a service charge as a contribution towards the administration of this resolution an amount equal to monthly

E. Work Stoppages

As noted earlier, a literal reading of section 105.540 (Section 2 of House Bill 166) indicates that while the right to strike is not granted, neither is it enjoined. There has been no significant upturn in the number of public employee strikes as a result of the passage of House Bill 166, as indicated in the chart below.

WORK STOPPAGE IN MISSOURI GOVERNMENT 1958-68⁷⁴

Year	No. Work Stoppages	Workers Involved	Man Days Idleness
1958	2	70	500
1959	3	110	310
1960	3	6,280	14,800
1961	1	60	60
1962	3	420	1,870
1963	1	100	400
1964	3	380	850
1965	2	140	460
1966	4	1,420	2,040
1967	6	200	900
1968	6	940	6,390

Although last year Kansas City and St. Louis, Missouri's two largest cities, ranked numbers one and two in the nation in terms of man-days of idleness resulting from strikes,⁷⁵ this high strike activity has not yet affected the public sector.⁷⁶ But there is a strong undercurrent of increased militancy throughout the unionized public sector. Since experience throughout the country would indicate that this militancy will tend to increase during the developing stages of collective bargaining, there is little doubt that Missouri government will soon be experiencing similar levels of strike activity unless affirmative action is taken to channel militants in other directions.

It is also of interest to note that in one case where a Missouri trial court has been asked to enjoin a strike of public employees, the court stated surprisingly that:

[i]t appearing to the Court that plaintiff has not shown irreparable harm will occur by reason of a work . . . stoppage which does not exceed three days . . . and further appearing that the situation

dues. Employees who fail to comply with this agreement, shall be discharged by the employer within thirty days after receipt of written notice to the employer by the Union.

74. ADVISORY COMMISSION, *supra* note 1, at 233-235.

75. Kansas City Star, June 10, 1970, at 7A, col. 5-6 (citing a Bureau of Labor Statistics release).

1969	Stoppages	Workers	Man-Days
1) Kansas City	58	59,700	2,730,900
2) St. Louis	130	78,600	2,356,000
3) New York	323	127,700	1,799,700

76. In Kansas City, state and local government employees were not involved in any reported work stoppages, and in St. Louis public employees accounted for only .23% of the total strike activity.

is a many faceted problem for which all parties are charged with serious responsibility, it is ordered and adjudged by this court that execution of a temporary injunction issued by it on this 9th day of March, 1970, is hereby suspended and shall be suspended and held in abeyance until such time as a work stoppage shall occur . . . exceeding three days, including the two previous days of work stoppage heretofore, prior to June 5, 1970.⁷⁷

Although this was a circuit court decision which is controlling in only a small area of the state and cannot be expected to find unanimous approval in other courts throughout the state, it does indicate reluctance on the part of at least one judge to enjoin work stoppages of public employees. If a trend develops in this direction the question of legislative intent in passing the clause relating to strikes in House Bill 166 may be moot if other courts follow suit and rule on strike injunction pleas based on a case-by-case assessment of possible consequences.

CONCLUSION

From this exploration of the mass of legislation, court decisions, and legal opinions, two overriding problems clearly emerge. First, it may be seen that, as in many other jurisdictions, legal doctrine in Missouri public sector labor relations lags far behind practical developments. Much of the current thought in the field is based on the *Glouse* case which was decided over 23 years ago and which clearly relied on the outdated concept of sovereignty. Further complications stemming from the use of outdated concepts center around the exclusion of certain employee groups from the protection of the law. One does not have to look far, even in Missouri, to find large numbers of organized employees among the ranks of both teachers and police as well as comprehensive agreements between these groups and their employers.⁷⁸ As a result of the exclusions, however, much management time has been spent trying to maintain artificial barriers to labor-management cooperation and, on the other hand, much employee time and effort has been spent trying to break these barriers down.

The second major problem is that even if current legal doctrine is based on more contemporary and realistic assessments of the situation, without adequate administrative machinery little possibility exists for an effectively functioning public sector labor relations system. In the case of Missouri legislation, what machinery exists is largely useless and may, in fact, be more of a drain on harmonious labor relations than an asset, since it

77. *Mehlville School District v. Mehlville Community Teachers Association*, No. 302100 (Circuit Court of St. Louis County, Div. 10, July 23, 1970).

78. In fact, this writer's personal observation of public employee labor organizations in Missouri over the past year leaves the distinct impression that one of the most effectively functioning operations in the state is the St. Louis Suburban Teachers Association.

encourages management to engage in anti-union conduct by allowing requests for unit determinations to go undecided for long periods of time. Further, in terms of insuring that "discussions" will occur in an environment conducive to agreement, no administrative machinery exists at all.

Given both the problem of outdated policy and that of inadequate administrative machinery, it seems likely that government employee unions will not long be satisfied with the situation as it stands, and will begin to seek improvement in conditions with actions beyond the simple "meet, confer, and discuss" provisions of House Bill 166.

The immediate threat, of course, is that of work stoppages. It will be recalled that the private sector in Missouri leads the nation in man-days lost due to strike activity and that militance among public employees is increasing along with their sophistication in the realm of collective bargaining. This increasing militance is especially evident among professional employees, such as teachers and nurses. These facts have not gone unnoticed by the state legislature, nor has the fact that the public sector outside Missouri is experiencing a rapidly increasing strike rate been unnoticed. In a recent speech by a member of the House Labor Committee, fear was expressed that Missouri would, given current conditions, soon follow the trend, and that "[c]learly, the time for action is now."⁷⁹ At least as disastrous in terms of strong labor-management relationships is the possibility that unions will try to compensate for their lack of effectiveness at the "discussion" table by turning to political action. The unions may well decide to use the power of the vote to secure gains directly from the legislature.

Neither widespread strikes nor coercion of the legislature are particularly appealing to either of the parties involved, or to the public. Fortunately, a third course of action exists and is, at least temporarily, the one that labor has adopted. This alternative involves the use of united activity for the purpose of securing legislative reform. The Public Employee Labor Legislation Committee, representing a large segment of the unionized public employees in Missouri, has drafted a new and comprehensive "Public Sector Collective Bargaining Law" for introduction in the current session of the legislature. While there is, of course, no guarantee that such legislation will pass, its rejection may well signal the end of the peaceful era of Missouri public sector labor relations and the beginning of a long period of labor unrest.

79. Address by George W. Parker, Summer Seminar of the Missouri Municipal Attorneys Association, July 18, 1970.

APPENDIX No. 1
 SENATE BILL No. 112
 73rd General Assembly
(Enacted 1965)

AN ACT

Relating to employees of a public body.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 105.500. As used in this act, "Public body" means the State of Missouri or any officer, board or commission of the state, or any other political subdivision of or within the state.

Section 105.510. Employees except police, deputy sheriffs, Missouri State Highway Patrol, Missouri National Guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through representatives of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization.

Section 105.520. Any public body may engage in negotiations relative to salaries and other conditions of employment of the public body employees, with labor organizations. Upon the completion of negotiations the results shall be reduced to writing and presented to the governing or legislative body in the form of an ordinance or resolution for appropriate action.

Section 105.530. Nothing contained herein shall be construed as granting a right to employees covered hereby to strike.

APPENDIX No. 2
 HOUSE BILL No. 166*
 74th General Assembly
(Enacted 1967)

AN ACT

To repeal Sections 105.500, 105.510, 105.520 and 105.530 RSMo Supplement 1965 relating to public employees joining labor organizations and collective bargaining with public bodies and to enact in lieu thereof five new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Sections 105.500, 105.510, 105.520, 105.530 and 105.540 as follows:

105.500. Unless the context otherwise requires, the following words and phrases mean:

(1) "Public body" means the State of Missouri, or any officer, *agency, department, bureau, division*, board or commission of the state, or any other political subdivision of or within the state.

(2) "*Exclusive bargaining representative*" means an organization which has been designated or selected by majority of employees in an appropriate unit as the representative of such employees in such unit for purposes of collective bargaining.

*Changes from Senate Bill No. 112 italicized.

(3) "Appropriate unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

105.510. Employees, except police, deputy sheriffs, Missouri State Highway Patrolmen, Missouri National Guard, all teachers of all Missouri schools, colleges and universities of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through representatives of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization.

105.520. *Whenever such proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives shall meet, confer and discuss such proposals relative to salaries and other conditions of employment of the employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit appropriate. Upon the completion of discussions, the results shall be reduced to writing and be presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.*

105.530.* *Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation. In the event that the appropriate administrative body or any of the bargaining units shall be aggrieved by the decision of the State Board of Mediation an appeal may be had to the circuit court of the county where the administrative body is located or in the Circuit Court of Cole County. The State Board of Mediation shall use the services of the State Hearing Officer in all contested cases.*

105.540.** *Nothing contained herein shall be construed as granting a right to employees covered hereby to strike.*

*Now § 105.525, RSMo 1969.

**Now § 105.530, RSMo 1969.

APPENDIX No. 3
SENATE BILL No. 36*
75th General Assembly
(Enacted 1969)

AN ACT

To repeal section 105.510 RSMo Supp. 1967, relating to public employees joining labor organizations and collective bargaining with public bodies and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

105.510. Employees, except police, deputy sheriffs, Missouri State Highway Patrolmen, Missouri National Guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization, *except that the above excepted employees have the right to form benevolent, social, or fraternal associations.*

*Changes from House Bill No. 166 italicized.